



David F. Askman  
Attorney at Law

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*[VIA EMAIL ONLY]*

Mr. Richard D. Mednick  
mednick.richard@epa.gov  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region 10  
1200 6<sup>th</sup> Avenue  
Seattle, WA 98101-3144

RE: Federal Facilities Agreement – Bradford Island Superfund Site

Dear Mr. Mednick:

On behalf of the Confederated Tribes and Bands of the Yakama Nation (“Yakama Nation”), I want to thank you for the opportunity to comment on the proposed template for the Federal Facilities Agreement (“FFA”) to be used at the Bradford Island Superfund Site. We continue to believe that Yakama Nation must be an integral member of the governmental team, and that our participation will ensure a safe, effective, and appropriate cleanup. But despite our continued requests to be part of this process, the Army Corps has chosen to shut Yakama Nation out of the initial phase of the cleanup. Today, we again informed the Army Corps that Yakama Nation has substantial and overlapping authorities that justify our participation in all aspects of the Bradford Island cleanup.

Yakama Nation intends to be a full participant in the development and implementation of the Site Management Plan (“SMP”), as you will see reflected in the comments below. It is our understanding that the Army Corps has put forward the FFA used for the cleanup at the Fort Eustis, Virginia, federal facility. Critically, that document does not appear to be a full SMP, but instead a simple timeline of cleanup milestones (Appendix F). Please confirm that this is not the final SMP, and that the SMP for Bradford Island will include significantly more detail with regard to items in the timeline, clear timelines for all review and response periods, details regarding each milestone, and similar requirements for all “other documents.”

Yakama Nation’s technical staff has reviewed the Fort Eustis agreement in detail and, while it is in some respects inapplicable to Bradford Island, provide the

following comments to those portions that do apply. We appreciate your willingness to provide these comments to the negotiating team.

1. Consistent with the representations made by the Army Corps (and EPA) to Yakama Nation Tribal Council, the FFA should include a discussion of the federal trust responsibility owed to Tribes. The current FFA has no such statement, but would relegate any Tribal participation to public comment (XXXIV Community Relations). We recommend that the FFA include the following statement, either in the “Purpose” section, or as a stand-alone section.

The Army Corps and EPA recognize that the United States has a **federal trust responsibility to Indian tribes**. That responsibility is a legally enforceable obligation on the part of the United States to protect tribal treaty rights, lands, assets, and resources, as well as a duty to carry out the mandates of federal law with respect to tribal sovereigns. The responsibility includes the fulfillment of understandings and expectations that have arisen during the course of the relationship between the United States and federally recognized tribes.

2. The FFA should include the formation of a government team, or teams. The current template includes none. Without these, there may be no venue in which to communicate the parties’ plans, strategies, and concerns, prior to the completion of formal draft documents. Teams could include a Technical Advisory Group or Technical Coordination Team, as well as a legal team. The teams should include representatives from the Corps, EPA, the States of Oregon and Washington, and interested Tribal sovereigns. Other representatives may also be appropriate, such as the U.S. Fish and Wildlife Service, NOAA, local health departments, and the Bonneville Power Authority. The Fort Eustis FFA includes the formation of a “Technical Review Team” under 10 U.S.C. § 2705(c) (¶ 36.4). That could be used as the authority – and viewed as a mandate – to establish the government teams, as it applies to “actions and proposed actions” at installations.

3. Both Oregon and Washington should be included as parties to the FFA as the site affects both states. This Fort Eustis FFA provides the State of Virginia with the opportunity to concur (or not concur) in certain decisions, and includes the State in technical meetings with the federal agencies. This should remain in the FFA, and should include both Oregon and Washington. Yakama Nation remains concerned that important state ARARs that have been submitted to the Army Corps, by both Oregon and Washington, are being ignored by the Corps. It is critical that the “integration” of ARARs remain as a purpose of the FFA (¶ 4.2.8).

4. We believe that the concept of “Accelerated Operable Units” needs to be maintained in the document. The definitions of both “Accelerated Operable Units” (§ 2.1) and “Operable Units” (§ 2.25) should be expanded to include both Operable Units (OUs) and sub-OUs, sometimes referred to as areas of potential concern, or “AOPCs”. As an example, the upland OU at the Bradford Island Site consists of four AOPCs (the landfill, pistol range, bulb slope and sandblast AOPCs). Other areas of the Site, including the Columbia River, could be subdivided later based on the sources of contamination. The tables in the FFA should reflect this, as well. Appendices A-D regarding OUs should be updated to include the Bradford Island Site’s OUs and AOPCs. A map of the areas should also be added.
5. Paragraph 2.38 should include submissions by email.
6. A specifically identified purpose of the FFA (within Section IV) should be to identify and evaluate data gaps at the Site.
7. It is unclear how RCRA applies to the Bradford Island Site. Some clarification of the provisions in Section VIII, if those provisions are to be included, is required.
8. As set forth above, an evaluation of data gaps at the Site should be included in Section IX. Yakama Nation believes it is critical at this Site that the provisions regarding Interim Actions be retained in the final FFA.
9. Yakama Nation requests the opportunity to review and comment on the Findings of Fact before the FFA is finalized.
10. Paragraph 9.2.4 should include an acknowledgment that the Army Corps may have to include schedules and milestones for RI/FS Work Plans that have “already been submitted” if ongoing work is modified or supplemented pursuant to Paragraph 9.1.
11. Consultations, such as those set forth in Paragraph 9.8.3 and Section 10, should include both the States of Oregon and Washington, and the government technical team.
12. Paragraph 10.3 sets forth a list of Primary Documents to be provided to EPA and the states for review. That list should include the Data Gaps Evaluation discussed herein, and monitoring plans for construction, performance, and long-term monitoring. The Initial Remedial Action and Data Quality Objectives (§ 10.4.1(1)) are not “secondary” documents, and should be included in § 10.3.

13. Each of Paragraphs 10.5, 10.6 and 10.7 should include the Government Team participation.
14. The Army Corps' review of ARARs in Paragraph 10.6.2 should not be limited to those provided by the States, but should include Tribal ARARs and the Tribes' interpretation thereof.
15. Regarding Paragraph 32, the publicly-available document repository can be found at <https://cdm16021.contentdm.oclc.org/customizations/collection/p16021coll7/pages/CERCLA/Bradford-Island/Bradford-Island-Administrative-Record.html>. The Corps recently made this site and has been uploading documents. The paragraph should reference this resource.

Again, we appreciate EPA's willingness to provide these comments to the negotiators of the FFA. Yakama Nation intends to fully participate in all aspects of the Bradford Island cleanup, on both technical and legal side. If you have any questions about these comments, please call David Askman at (720) 407 4331.

Very truly yours,

*s/ David F. Askman*

David F. Askman, Esq.  
THE ASKMAN LAW FIRM, LLC  
1543 Champa Street, Suite 400  
Denver, CO 80202

CC via email only: Rose Longoria  
Laura Klasner Shira  
Tom Zeilman  
Michael Frandina